

General Information Letter: Compensation for services rendered within and without Illinois is "paid in this State" if the employee's base of operations is in this State or, if there is no base of operations, the service is directed or controlled from a place within this State.

October 19, 1998

Dear:

This is in response to your letter dated October 1, 1998, in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

I was referred to your office by Mrs. xxxxxx xxxxxxxxx, concerning my request to be exempt from paying my Il. Income tax for 1997. xxxxxx has my original letter in which I go into great detail. Briefly, I lived and maintained a limousine owned by xxxxxxxx' xxxxxx in the state of Tn. I dropped-off customers in Il.{like a truck-driver drops off freight} Sometimes, I returned immediately to Tn. Or another state and sometimes I waited a few hours or occasionally stayed over-night and then returned. Mrs. xxxxxxxxx' asked me to get a letter from xxxxxxxx'x stating that I didn't work in the State of Illinois. That wouldn't exactly be true in that I was being paid while in Il. , even if it was only for a few minutes. If a trucker dropped freight off in Il., and rested or slept for a while, or even worked on their truck, according to Mrs. Xxxxxxxx',. they could file for a refund of their taxes withheld by Ill. and receive a refund. I feel strongly that my case is similar to that of a truck driver. A condition of my employment with xxxxxxxx'x was that I live in Tn., where xxxxxxxx'x paid for a garage and office for me to conduct my business in Tn.

If I had lived in another state, I would receive a waiver to pay that states'taxes. Since Tn.. doesn't have an income tax, Il. is keeping my taxes. In non-legal terms that ISN'T FAIR!!!! I hope that we can resolve this matter without me making a trip to IL. for a hearing. I'm no longer employed by xxxxxxx'x.

Department Analysis

After reviewing your letter it appears that xxxxxxx'x xxxxxxx should not have been

withholding Illinois income taxes from your paycheck while you were employed by the xxxxxx. Section 302 of the Illinois Income Tax Act ("IITA") sets down the general rule for when non-residents must allocate compensation to Illinois for Illinois income tax purposes. Section 302 states in part:

(a) In general. All items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocated to this State.

Since you are a non-resident, reference must be made to section 304(a)(2)(B) to determine if the compensation received by yourself is "compensation paid in this State" as the IITA defines it. Section 304(a)(2)(B) states:

(B) Compensation is paid in this State if:

(i) The individual's service is performed entirely within this State;

(ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or

(iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State. Beginning with taxable years ending on or after December 31, 1992, for residents of states that impose a comparable tax liability on residents of this State, for purposes of item (i) of this paragraph (B), in the case of persons who perform personal services under personal service contracts for sports performances, services by that person at a sporting event taking place in Illinois shall be deemed to be a performance entirely within this State.

Only under the above circumstances would you be required to allocate your wages to Illinois. Under a 304(a)(2)(B) analysis place of residence is unimportant except for a few limited exceptions listed in 304(a)(2)(B)(iii). Rather, priority is placed upon place of service. Since your service was not entirely performed within Illinois, provision (B)(i) would not apply to yourself. Similarly, provision (ii) would apply only if your service outside of Illinois is deemed "incidental" to your service within Illinois. Guidance on the definition of "incidental" to service within Illinois is given in 86 Illinois Administrative Code, Ch. 1, Sec. 100.7010(c)(2) which states in part:

...[T]he term incidental means any service which is necessary to or supportive of the primary service performed by the employee or which is temporary or transitory in nature or consists of isolated transactions. The incidental service referred to above may or may not be similar to the individual's normal occupation so long as it is performed within the same employer-employee relationship. That is, an individual who normally performs all of his service in this State may be sent by his employer to another state to perform service which is totally different in nature from his usual work or he may be sent to do similar work. So long as such service is temporary or consists

merely of isolated transactions, it will be considered to be incidental to his service performed within this State, and his entire compensation will be subject to withholding.

Because the nature of your job required you to regularly drive to several other states to pick up patrons and you were required to maintain a garage in Tennessee for the maintenance of your limousine, your out-of-Illinois duties would not be deemed incidental. Accordingly, provision B(ii) would not apply to yourself either.

This only leaves provision (B)(iii) as a possible way for your compensation to be deemed "paid in this state." Section 304(a)(2)(B)(iii) lists two possible ways that a non-resident could have compensation "paid in this State." The first is if some of the duties are performed within Illinois and the base of operations, or if there is no base of operations, the place from which the service is directed or controlled, is in Illinois. The second method is if the base of operations or place from which the service is directed is not in any state in which some of the service is performed but the individual is a resident of Illinois. The second method is inapplicable to your situation because it applies only to Illinois residents. This leaves only the first method.

Because part of your service was within Illinois, i.e. you dropped patrons off at the casino and picked patrons up from there, the first situation in (B)(iii) could apply to yourself giving you compensation "paid in this State." The question hinges on whether you had a base of operations, and if so, where it was located. If you have a base of operations and it was in Illinois your compensation would be allocated to Illinois. If your base of operations was in Tennessee, then you would not have to allocate income to Illinois. If you did not have a base of operations, then the statute requires analysis of where you were directed from. Your place of direction would be in Illinois since your employer was based in Illinois and your assignments were sent from Illinois. Accordingly, your wages would be allocated to Illinois.

Thus, the question comes down to whether or not you had a base of operations, and if so where was it located. "Base of Operations" is defined in the regulations at 86 Illinois Administrative Code Section 100.7010 (d)(2). "Base of operations" is defined as:

[t]he term "base of operations" refers to the place or fixed center from which the individual works. An individual's base of operations may be his business office (which may be maintained in his home), or his contract of employment may specify a place at which the employee is to receive his directions and instructions. In the absence of more controlling factors, an individual's base of operations may be the place to which he has his business mail, supplies, and equipment sent or the place where he maintains his business records.

Since your employer specified that you must live in Tennessee and provided you with a garage to store and maintain your limousine there, and since you received directions in Tennessee, you did have a base of operations and it was in Tennessee. The fact that you would start and end each day in Tennessee supports this conclusion. Because your "base of operations" was not in Illinois section 304(a)(2)(B)(iii) would not apply to yourself. Hence, you would not have compensation paid in Illinois. You are therefore entitled to a refund of any compensation withheld by Player's casino for Illinois income tax purposes.

To receive a refund for wages withheld for Illinois income tax purposes, you must

file an IL-1040-X to amend your prior tax returns. If you did not actually file any returns, you must file appropriate IL-1040's for the years in which you are claiming a refund. I am therefore enclosing two IL-1040-Xs a 1996 IL-1040 and a 1997 IL-1040 with instructions for your convenience.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian
Associate Counsel (Income Tax)